No. 18-481

In the Supreme Court of the United States

FOOD MARKETING INSTITUTE, *Petitioner*

v.

ARGUS LEADER MEDIA, D/B/A ARGUS LEADER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents more than three million businesses and professional organizations of every size, in every sector, and from every geographic region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Chamber's membership includes companies that do business in each of the 50 states, many of which operate nationwide. These businesses frequently submit sensitive information to the federal government, either voluntarily or under mandatory reporting requirements. Whether such information is subject to public disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, is therefore of great importance to the Chamber's members. Accordingly, they have a keen interest in the proper interpretation of FOIA's Exemption 4, which protects from disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." *Id.* § 552(b)(4). As Petitioner has explained, the lower courts have adopted an atextual interpretation of Exemption 4,

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. The parties were given timely notice and have consented to this filing.

and, in doing so, have created substantial uncertainty regarding the exemption's scope. That uncertainty impedes the ability of the Chamber's members to make informed judgments regarding the potential risks of sharing with the government sensitive materials regarding their business operations.

INTRODUCTION AND SUMMARY OF ARGUMENT

To function, the government requires information from the governed. Much of that information is "confidential"—i.e., it is held "in confidence" and is "not publicly disseminated." *Critical Mass Energy Project* v. *Nuclear Regulatory Comm'n*, 931 F.2d 939, 947 (D.C. Cir. 1991) (*Critical Mass II*) (Randolph, J., concurring) (quoting *Webster's Third International Dictionary* 476 (1981)). FOIA's Exemption 4 protects such information from public release by the government. It provides that FOIA's command to "make [agency] records promptly available to any person" upon request "does not apply to matters that are * * * commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(a)(3)(A), (b)(4). In keeping with the ordinary meaning of its plain language, this provision should allow businesses to share sensitive commercial information freely with the government, safe in the understanding that the information will not be disclosed under FOIA as long as the submitter has not otherwise made the information available to the general public.

As Petitioner explains, however, the courts of appeals have turned away from Exemption 4's plain text. Instead, based on a selective reading of

legislative history, including witness testimony in a prior Congress's hearing on a predecessor bill, they have held that the party invoking Exemption 4 bears the burden of proving that disclosure "is likely * * * to impair the Government's ability to obtain necessary information in the future" or "to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also 5 U.S.C. § 552(a)(4)(B) ("[T]he burden is on the agency to sustain its action."); *National Parks & Conservation Ass'n* v. *Kleppe*, 547 F.2d 673, 679 n.20 (D.C. Cir. 1976) ("The party seeking to avoid disclosure bears the burden of proving that the circumstances justify nondisclosure.").

That test has no basis in Exemption 4's text, which nowhere refers to the concepts of substantial competitive harm or the government's ability to obtain necessary information. As the petition explains, see Pet. 17-21, that fundamental flaw alone provides compelling grounds for this Court to grant review and correct the lower courts' deviation from what Congress provided in Exemption 4's plain text. See, *e.g.*, *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) ("We must enforce plain and unambiguous statutory language according to its terms.").

This Court's intervention is particularly needed because the *National Parks* standard has proven to be extraordinarily burdensome and unworkable. Because the rule is not guided by FOIA's text, the courts of appeals have diverged in their interpretation and application of *National Parks*, generating numerous circuit splits and substantial uncertainty regarding Exemption 4's scope. This uncertainty

severely impairs companies' ability to make informed decisions about whether to voluntarily share sensitive information with the government or participate in programs that mandate disclosure of confidential information to government agencies. And if a company does share its information and that information is then the subject of a FOIA request, the company may be required to expend significant resources to establish that the information's public disclosure would cause substantial competitive harm. By contrast, adhering to Exemption 4's plain language would provide greater predictability and simplify litigation for both parties and courts by focusing the inquiry on the straightforward question of whether the information at issue is "confidential" or instead has been publicly disseminated. Courts should ordinarily be able to answer that question without extensive evidentiary proceedings or expert testimony.

Finally, the question presented here has unquestionable importance. Exemption 4 affects industries as diverse as nuclear waste disposal,[2] banking,[3] real estate development,[4] manufacturing,[5] agriculture,[6] and the importation of nonhuman

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[2] *State of Utah* v. *Dep't of Interior*, 256 F.3d 967, 970 (10th Cir. 2001).

[3] *Inner City Press/Cmty. on the Move* v. *Bd. of Governors of the Fed. Reserve Sys.*, 463 F.3d 239, 242 (2d Cir. 2006).

[4] *Nadler* v. *FDIC*, 92 F.3d 93, 94-95 (2d Cir. 1996).

[5] *United Techs. Corp. ex rel. Pratt & Whitney* v. *FAA*, 102 F.3d 688, 689 (2d Cir. 1996).

[6] *Lion Raisins, Inc.* v. *USDA*, 354 F.3d 1072, 1076 (9th Cir. 2004), *overruled on other grounds by Animal Legal Def. Fund* v. *USDA*, 836 F.3d 987 (9th Cir. 2016).

primates.[7] And the kinds of information that may be at issue in Exemption 4 cases are equally diverse, including among other things: audit reports documenting a corporation's financial position,[8] records of quality inspections at food processing facilities,[9] airplane-engine designs,[10] and "detailed intrastate sales information, including the names of purchasers * * * and price terms."[11] The sheer number of businesses affected by *National Parks*, as well as the amount of litigation generated by its application, underscores the importance of this case for the national economy. This Court's review is urgently needed.

ARGUMENT

I. The Atextual *National Parks* Standard Has Caused Numerous Circuit Splits, Creating Substantial Uncertainty Regarding The Proper Application Of Exemption 4

Unmoored from FOIA's text, the courts of appeals have diverged on the proper interpretation and application of *National Parks*, generating numerous circuit splits. As the petition notes, see Pet. 25-29, many of these disagreements pertain to whether the party invoking Exemption 4 must prove that

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[7] *People for the Ethical Treatment of Animals* v. *Dep't of Health & Human Servs.*, 901 F.3d 343, 347-348 (D.C. Cir. 2018) ("*PETA*").

[8] *Sharyland Water Supply Corp.* v. *Block*, 755 F.2d 397, 400 (5th Cir. 1985).

[9] *Lion Raisins*, 354 F.3d at 1075-1078.

[10] *Pratt & Whitney*, 102 F.3d at 689-690.

[11] *Continental Oil Co.* v. *Fed. Power Comm'n*, 519 F.2d 31, 32 (5th Cir. 1975).

disclosure would cause substantial competitive harm. Courts of appeals disagree regarding (1) the level of precision with which the party resisting disclosure must establish a particular competitive harm, such as lost market share,[12] (2) the role that defining a "relevant market" plays in determining the existence of "competition,"[13] (3) whether competitive harm can be shown based on the possibility of future competition from new market entrants,[14] and (4) whether

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[12] See *N.H. Right to Life* v. *Dep't of Health & Human Servs.*, 136 S. Ct. 383, 384 (2015) (Thomas, J., dissenting). Compare, *e.g.*, *Utah*, 256 F.3d at 970 (accepting "*potential* economic harm" as sufficient to establish substantial competitive harm), with Pet. App. 5a ("A likelihood of commercial usefulness—without more—is not the same as a likelihood of substantial competitive harm."), and *GC MicroCorp.* v. *Def. Logistics Agency*, 33 F.3d 1109, 1114-1115 (9th Cir. 1994) (compelling disclosure despite affidavits from affected businesses explaining that competitors could use information to "alter their subcontracting strategies to better compete"), overruled on other grounds by *Animal Legal Def. Fund* v. *USDA*, 836 F.3d 987 (9th Cir. 2016).

[13] See *N.H. Right to Life*, 136 S. Ct. at 384 (Thomas, J., dissenting). Compare, *e.g.*, *Watkins* v. *Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1196 (9th Cir. 2011) ("[T]he government needs to show there is actual competition in the *relevant market* and a likelihood of substantial injury." (emphasis added)), with *N.H. Right to Life* v. *Dep't of Health & Human Servs.*, 778 F.3d 43, 51 (1st Cir. 2015) (finding substantial competitive harm even though information at issue was submitted as part of a "non-competitive grant process").

[14] Compare, *e.g.*, *N.H. Right to Life*, 778 F.3d at 51 (emphasizing that a "potential future competitor could take advantage" of information at issue), with *Hercules, Inc.* v. *Marsh*, 839 F.2d 1027, 1030 (4th Cir. 1988) (holding that argument regarding future competition was impermissibly "speculative").

embarrassment and bad publicity can qualify as cognizable "competitive injur[ies]."[15]

Those are not the only splits that *National Parks* has produced. *National Parks*' first prong—under which information qualifies as "confidential" if disclosure would likely "impair the Government's ability to obtain necessary information in the future," 498 F.2d at 770—has also generated disagreement among the courts of appeals. Taking an expansive approach, the First and D.C. Circuits have adopted a "program effectiveness" test, which allows the government to withhold information when doing so "serves a valuable purpose and is useful for the effective execution of [an agency's] statutory responsibilities." *9 to 5 Org. for Women Office Workers* v. *Bd. of Governors of the Fed. Reserve Sys.*, 721 F.2d 1, 11 (1st Cir. 1983); see also *Critical Mass Energy Project* v. *Nuclear Regulatory Comm'n*, 830 F.2d 278, 286-287 (D.C. Cir. 1987) (*Critical Mass I*). The Second Circuit, by contrast, has expressly rejected the "program effectiveness" test. See *Bloomberg, L.P.* v. *Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143, 150-151 (2d Cir. 2010). According to the Second Circuit, that test "would give impermissible deference to the agency, and would be analogous to the 'public interest' standard rejected by the Supreme Court in

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[15] See *N.H. Right to Life*, 136 S. Ct. at 384-385. Compare, *e.g.*, *Nadler*, 92 F.3d at 97 (finding a likelihood of substantial competitive harm when requesters sought information to support their opposition of real estate development project), with *Pub. Citizen Health Research Grp.* v. *FDA*, 704 F.2d 1280, 1291 n.30 (D.C. Cir. 1983) ("emphasiz[ing] that" competitive harm "should not be taken to mean simply any injury to competitive position, as might flow from * * * embarrassing publicity" (citation omitted)).

the context of Exemption Five." *Id.* at 150 (citing *Fed. Open Market Comm'n of Fed. Reserve Sys.* v. *Merrill*, 443 U.S. 340, 354 (1979)).

Similarly, the D.C. and Ninth Circuits disagree about the appropriate standard for determining whether the government has waived its ability to invoke Exemption 4. The D.C. Circuit has developed a "public domain" exception to FOIA's exemptions, under which "the government [or submitter] may not rely on an otherwise valid exemption to justify withholding information that is already in the 'public domain.'" *Students Against Genocide* v. *Dep't of State*, 257 F.3d 828, 836 (D.C. Cir. 2001); see also, *e.g.*, *PETA*, 901 F.3d at 352 (addressing public domain argument in Exemption 4 case). The D.C. Circuit has made clear that the exception is narrow: A court "must be confident that the information sought is *truly public* and that the requester [will] receive no more than what is publicly available before [it] find[s] a waiver." *Students Against Genocide*, 257 F.3d at 836 (emphasis added) (quoting *Cottone* v. *Reno*, 193 F.3d 550, 555 (D.C. Cir. 1999)). "For the public domain doctrine to apply, the specific information sought must have already been 'disclosed and preserved in a *permanent public record*.'" *Ibid.* (emphasis added) (quoting *Cottone*, 193 F.3d at 554). Thus, in the D.C. Circuit, a waiver of Exemption 4 occurs *only if* the requested information is *in fact* generally available to the public at large.

In *Watkins*, by contrast, the Ninth Circuit held that "a no-strings-attached disclosure of * * * confidential information to a private third party" effects a waiver, even if the information is not generally available in a "permanent public record," and there is no evidence

that the recipient of the information has *in fact* widely disseminated it to others. 643 F.3d at 1197-1198. This broader approach contrasts with the D.C. Circuit's test, under which it is not enough that a person in possession of the requested information *could* share it with whomever he pleases. *See id.* at 1197 (asserting that D.C. Circuit's "public domain" standard "should not be the *only* test for government waiver").

Most striking of all, the courts of appeals have failed to even decide definitively when *National Parks* applies. Almost two decades after handing down the decision, the D.C. Circuit was still grappling with its consequences in 1992. See *Critical Mass Energy Project* v. *Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992) (en banc) (*Critical Mass III*). After granting rehearing *en banc* to reconsider *National Parks*, the D.C. Circuit declined to overrule that decision, but it imposed an atextual limitation on its atextual test, "confin[ing] [the *National Parks* standard] to information that persons are *required* to provide to the Government," explaining that voluntarily submitted information should be "treated as confidential under Exemption 4 if it is of a kind that the provider would not customarily make available to the public." *Id.* at 872 (emphasis added).

To date, only the Tenth Circuit has embraced the D.C. Circuit's distinction between voluntary and involuntary submissions. See *Utah*, 256 F.3d at 969. Other circuits have sidestepped the question, depriving the government and private litigants of guidance on whether their disputes will be subjected to the *National Parks* test. See, *e.g.*, *N.H. Right to Life*, 778 F.3d at 52 n.8; see also *Inner City Press/Cmty. on the Move* v. *Bd. of Governors of the Fed. Reserve Sys.*,

463 F.3d 239, 245 n.6 (2d Cir. 2006); *Am. Mgmt. Servs., LLC* v. *Dep't of the Army*, 703 F.3d 724, 731 n.6 (4th Cir. 2013); *Frazee* v. *Forest Serv.*, 97 F.3d 367, 371-372 (9th Cir. 1996).

The Department of Justice's *Guide to the Freedom of Information Act* offers a stark illustration of how much uncertainty *National Parks* has caused. See Department of Justice, *Guide to the Freedom of Information Act*, https://www.justice.gov/oip/doj-guide-freedom-information-act-0. Although the *Guide* addresses some exemptions in less than ten pages, it takes 94 pages and 552 footnotes to describe the fractured case law addressing Exemption 4. The divergent applications of Exemption 4 will persist until this Court intervenes and attacks the root of the problem—the D.C. Circuit's erroneous decision in *National Parks*.

II. *National Parks* Is Extraordinarily Burdensome And Affects A Wide Range Of Industries

A. Adhering To Exemption 4's Plain Language Would Alleviate The Substantial Burdens *National Parks* Imposes

In addition to giving rise to numerous circuit splits, the *National Parks* test has imposed substantial burdens on courts and litigants. The government and the private party resisting disclosure must devote significant time and resources to amass the evidence required to bear their burden of establishing that disclosure would cause substantial competitive harm. See 5 U.S.C. § 552(a)(4)(B); *National Parks*, 547 F.2d at 679 n.20. Frequently, that effort will include costly and time-consuming expert testimony. The trial court must devote time to resolving factual disputes—which

may necessitate a lengthy evidentiary hearing—and the appellate court must wade through the substantial record to review the trial court's findings.[16]

Take this case. The district court here held a two-day bench trial to assess the competitive harm of releasing store-level Supplemental Nutrition Assistance Program ("SNAP") sales data. See Pet. 6. At trial, the Department of Agriculture presented testimony from the president and owner of a supermarket chain, the president and CEO of the National Grocers Association, a senior vice president of marketing of a convenience-store chain, an associate general counsel of Sears Holdings Management Corporation, and an expert witness on the food-retail industry. See Pet. App. 11a-13a. Despite the government's substantial proof (which at a minimum demonstrated that the data "might prove useful" to competitors), the courts below still concluded that the Department had failed to satisfy its burden to justify withholding the SNAP data under the *National Parks* test. *Id.* at 5a; see also *id.* at 18a-20a.

National Parks is another case in point. That case involved a request for financial records that national park concessioners (businesses licensed to sell goods

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[16] The Eighth Circuit sought to counter these considerations by asserting that applying Exemption 4 in accordance with its plain language "would swallow FOIA nearly whole." Pet. App. 4a n.4. But that assertion is unfounded. As Exemption 4's text makes clear, it applies only to "trade secrets" and "privileged or confidential" information that is "commercial or financial" in nature and that the government "obtained" from a third party. 5 U.S.C. § 552(b)(4). The Eighth Circuit provides no reason to believe that a substantial proportion of the mountains of data otherwise subject to disclosure under FOIA satisfy those criteria.

and services in national parks) were required to file with the National Park Service. See *National Parks*, 498 F.2d at 770. The district court found that the "information was of the kind that would not generally be made available for public perusal." *Ibid.* (citation omitted). Under the term's plain meaning, that should have sufficed for the information to qualify as "confidential" under Exemption 4. Yet the D.C. Circuit remanded the case for the district court to "determin[e] whether public disclosure of the information in question pose[d] the likelihood of substantial harm to the competitive positions" of the concessioners. *Id.* at 771.

On remand, the district court held "two days of further evidentiary hearings * * * on the competitive injury issue." *National Parks*, 547 F.2d at 675. After considering this evidence, the court concluded that the bulk of the financial information at issue was protected from disclosure under the standard that the D.C. Circuit had announced. See *ibid.*

On the case's *second* appeal, the D.C. Circuit affirmed in part and reversed in part. *National Parks*, 547 F.2d at 687-688. Parsing the extensive factual record, the court concluded that the district court had clearly erred in "finding that disclosure of the financial information would 'materially increase the opportunity for potentially damaging competition for renewal of concessions [contracts].'" *Id.* at 682. Nevertheless, the D.C. Circuit held that the financial records of five of the seven concessioners involved in the case could be withheld under Exemption 4 because the record demonstrated that those concessioners "face[d] meaningful day-to-day competition with businesses offering similar goods and services both

within and outside the national parks." *Id.* at 681. In reaching that conclusion, the court examined detailed evidence regarding "the location of the park concessioners relative to other similar businesses." *Id.* at 682. The court emphasized that one town near Yellowstone National Park "boast[ed] 47 motels, 9 gas stations and 12 restaurants" that competed with Yellowstone's major concessioner. *Id.* at 682-683. Similarly, the court noted that a concessioner in Grand Canyon National Park faced competition from businesses in "a small community" approximately "eight miles" away that "feature[d] several hundred beds, 1,000 seats for food service and assorted curio shops." *Id.* at 683. Two concessioners failed to present similarly detailed evidence regarding their particular competitive situations. *Ibid.* For those concessioners, the D.C. Circuit ordered another remand for still more proceedings to determine whether the concessioners had satisfied the *National Parks* standard. *Id.* at 687-688.

National Parks thus imposes significant burdens on both litigants and courts, which can readily yield multiple trips between the court of appeals and the district court as both the courts and the parties struggle to deal with the significant evidentiary demands that the test imposes. By contrast, adhering to Exemption 4's text would minimize the burdens for litigants and courts. Exemption 4's plain language sets forth a straightforward inquiry into whether the information at issue is "confidential"—i.e., it has been held "in confidence" and "not publicly disseminated." *Critical Mass II*, 931 F.2d at 947 (Randolph, J., concurring). Resolving that discrete issue generally should not require elaborate evidentiary proceedings

or expert testimony, promoting important interests in administrative simplicity and conserving judicial resources. Cf. *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94-95 (2010). Using a text-based test would also promote greater predictability, which is "valuable to corporations making business and investment decisions." *Ibid.* (citing *First Nat. City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983)).

B. *National Parks* Risks Deterring Companies From Sharing Information With The Government And Participating In Government Programs

National Parks also threatens to deter the provision of vital information to the government. The D.C. Circuit itself has recognized that this chilling effect exists with respect to information that private parties are not *required* to provide to the government. As that court has explained, "[i]t is a matter of common sense that the disclosure of information the Government has secured from voluntary sources on a confidential basis will * * * jeopardize its continuing ability to secure such data on a cooperative basis." *Critical Mass III*, 975 F.2d at 879. Therefore, as explained above, see *supra* pp. 9-10, the D.C. Circuit has limited the *National Parks* standard so that it applies only to "information submitted under compulsion." *Critical Mass III*, 975 F.2d at 879. Other courts, however, have yet to adopt the D.C. Circuit's limitation on *National Parks*, so in those circuits the chilling effect on voluntary disclosures may persist.

Furthermore, *Critical Mass III* ignores that its concern about deterring the voluntary provision of

information to the government extends to programs like SNAP where the government becomes entitled to receive certain information only after a private party *voluntarily* chooses to participate in the government program. It is equally "a matter of common sense" that private parties may hesitate to participate in voluntary government programs that require disclosure of confidential information to government officials if there is a significant risk that the information may subsequently be publicly released under FOIA. See 975 F.2d at 879.

C. Exemption 4 Affects A Wide Range Of Industries And Types Of Information

The question presented here is unquestionably important. This Court has "never interpreted" Exemption 4, although hundreds of cases address that provision. *N.H. Right to Life*, 136 S. Ct. at 383 (Thomas, J., dissenting). The industries Exemption 4 affects range from the nation's most influential and pervasive—such as banking, see *Inner City Press*, 463 F.3d at 242 (addressing information in bank merger application submitted to Federal Reserve Board)—to those serving far more discrete interests, see, *e.g.*, *PETA,* 901 F.3d at 347-348 (affected parties were importers of nonhuman primates). Affected parties include nuclear power producers and nuclear waste disposal companies. See *Critical Mass I*, 830 F.2d at 279-280; *Utah*, 256 F.3d at 968-969. Some affected parties trade in lumber and others in agricultural products. See *Baker & Hostetler LLP* v. *Dep't of Commerce*, 473 F.3d 312, 315 (D.C. Cir. 2006); *Lion Raisins*, 354 F.3d at 1076. Their work often involves matters of great import, including public health and international relations. See *Public Citizen*, 704 F.2d

at 1282-1284 (affected parties were manufacturers of vision-correcting intraocular lenses); *Stone* v. *Exp.-Imp. Bank of U.S.*, 552 F.2d 132, 133 (5th Cir. 1977) (affected party was an agency of the Soviet Union seeking U.S.-export financing). And many are non-businesses, such as labor unions and Indian tribes. See *American Airlines, Inc.* v. *Nat'l Mediation Bd.*, 588 F.2d 863, 864-865 (2d Cir. 1978); *Utah*, 256 F.3d at 968-969.

The diversity of affected parties reflects the extraordinary number of disclosures required or requested by the federal government. The U.S. Code *requires* private parties to furnish information to the government on such varied matters as securities,[17] banks,[18] labor,[19] food purity,[20] drug safety and efficacy,[21] and even "weather modification activity."[22] And, needless to say, the government may *request* information on a potentially infinite number of subjects, and use the tools at its disposal to ensure compliance.

The types of information at issue in Exemption 4 cases are extraordinarily diverse. The information sought ranges from documentation of agricultural inspections to "information on [automobile] airbag systems." Compare *Lion Raisins*, 354 F.3d at 1075, with *Ctr. for Auto Safety* v. *NHTSA*, 244 F.3d 144, 145-147 (D.C. Cir. 2001). Exemption 4 cases frequently

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[17] See 15 U.S.C. § 77a, *et seq.*

[18] See 12 U.S.C. § 161.

[19] See 29 U.S.C. § 431.

[20] See 7 U.S.C. § 138e.

[21] See 21 U.S.C. § 355(i).

[22] See 15 U.S.C. § 330a.

involve expansive information requests, such as the request to the Bureau of Labor Statistics in *FlightSafety Servs. Corp.* v. *Dep't of Labor,* 326 F.3d 607, 609 (5th Cir. 2003) for "all raw data collected to create" wage determination schedules for various markets. The information requests are also often intrusive, as when the Fifth Circuit declined to prevent the release of "audit reports" and "statements" documenting in detail a corporation's financial health. *Sharyland*, 755 F.2d at 398; see also *Continental Oil*, 519 F.2d at 35 (information at issue was "a contract by contract, field by field exposition of the petitioners' product marketing"). Sometimes, the requested information risks harming the submitter's reputation. See *CNA Fin. Corp.* v. *Donovan*, 830 F.2d 1132, 1134-1136 (D.C. Cir. 1987) (noting submitter's concern about "adverse publicity" if information regarding its affirmative-action programs was released).

With so much information and such important interests at stake, it is imperative for the Court to grant review to clear up the considerable confusion *National Parks* has created. Refocusing courts on Exemption 4's plain text will alleviate uncertainty, reduce burdens on both courts and litigants, and allow companies to make informed decisions about whether to voluntarily share sensitive information with the government or participate in government programs that entail mandatory disclosures.

CONCLUSION

For the foregoing reasons and those in the petition, the petition for a writ of *certiorari* should be granted.

Respectfully submitted.

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